COPY

OFFICE OF ATTORNEY-GENERAL

October 14, 1954

Attorney General

Richard C. Duncan, Esq.,
Assistant Attorney General

OASI Referendum for Members of
Teachers Insurance and Annuity Association

James J. Barry, Commissioner,
Dep't. of Public Welfare

Dear Mr. Barry:

You have inquired whether a referendum in accordance with the 1954 amendments of the Federal Social Security Act is permissible under chapter 234, Laws of 1951, in relation to the members of the Teachers Insurance and Annuity Association at the University of New Hampshire. It is my understanding that this Association is deemdd by the Federal Government to be a retirement system within the meaning of the Social Security Act so as to bar participation in the system by its members. By the 1954 amendments employees of the state or its political subdivisions who are members of a retirement system, excepting policemen or firemen, may now obtain social security coverage provided the State enabling act permits this and the members so choose by referendum.

It is my opinion that members of the Teachers Insurance and Annuity Association may be covered if by the referendum they so elect. Section 1, chapter 234, Laws of 1951, specifically states that the policy of the act is "to provide such protection to employees and officials of the state and its political subdivisions on as broad a basis as is permitted under the Social Security Act, except as may be otherwise specifically limited hereinafter". Coverage of this group is now permitted by Federal law and it does not fall within the prohibited groups of paragraph II(3), section 2 of said chapter 234, which is limited to members of the state employees', teachers', policemen's and firemen's retirement systems.

Very truly yours,

Richard C. Duncan
Assistant Attorney General

RCD:HP

October 14, 1954

Attorney General

r. Nelson, Esq.,
Assistant Attorney General

Advertising signs at Hampton Beach

H. H. Richardson,
Assistant Maintenance Engineer,
Department of Public Works and Highways

Dear Sir:

In replying to your communication of September 20, 1954, and attached correspondence, it appears pertinent to point out that unless this highway is one to which the fee has been acquired or one to which s. 1.18(b) of Federal Road Aid Act regulations applies, the rights of the State are only an easement for highway purposes. Bigelow v. Whitcomb, 72 N.H. 473, Laconia v. Morin, 92 N.H. 314. In such case the abutting landowner owns to the thread of the way subject only to the limited right of the public to reasonably use the land as a way. State v. Cox, 91 N.H. 137, Winchester v. Capron, 63 N.H. 605, State v. Scott, 82 N.H. 278. For instance, the right of an owner to extend his building's bay window over the right of way in a manner not unreasonably interfering with public travel over the way has been sustained. Town of Exeter v. Merrs, 80 N.H. 132.

Unless such signs unreasonably interfere with the public's use of the highway or the safety of public travel thereon, the owner may erect or permit signs on that portion of his land embraced within the limits of the right of way and outside of the travelled way, subject to local zoning restrictions where applicable Regulation cannot go beyond the scope of the public right. The law is clear that a landowner may use his land within the highway right of way for all purposes not inconsistent with the public easement as a general rule. On the other hand, presence of signs within highway right of way limits may subject an abutting landowner to civil liability to a traveler if so placed as to contribute to cause an accident. Harriman v. Moore, 74 N.H. 277, Valley v. P.R., 68 N.H. 546. Such sign may be held to be a nuisance. Hutter v. Pearl, 71 N.H. 247. Exclusion of private occupancy of the whole right of way width may be a public need. Leary v. Manchester, 91 N.H. 442. Each case stands on its own set of facts as to the relative rights and requirements of the owner and the travelling public. See also Opinion of the Justices, 94 N.H. 501, relative to rights of the travelling public developing with the development of means of transportation.

In this particular problem the abutting landowner, i
he desires the sign of his competitor removed from his land which l

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George F. Nelson, Esq.,
Assistant Attorney General

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H. H. Richardson,
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Department of Public Works and Highways

within the highway right of way, has sufficient ownership of the land to do so by appropriate legal action without involving the State. The State has no right to grant a third person the right to erect within right of way limits a business sign on land of an owner which abuts a travelled way other than with and during the consent of said abutting owner.

If this sign represents a hazard to the general travelling public, it is subject to the commissioner's regulation. If it merely represents an inconvenience and obstacle to patrons of the abutting owner upon whose land it is placed, the removal proceedings are the responsibility of said owner. Proper classification between these two alternatives is for the judgment of the Commissioner of Public Works and Highways based upon the actual factual situation, and no legal opinion as to whether the sign should or should not be removed can be made by this office.

Very truly yours,

George F. Nelson
Assistant Attorney General

GFN:HP